

SYNOPSIS
Administrative Rules for Certificate of Need Appeal Panel

Rule 274-1-.10
Conduct of Initial Administrative Appeal Hearing

STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE

The purpose of the proposed amendments in totality is to modify existing regulations in light of changes in the Certificate of Need statute, O.C.G.A. § 31-6 et seq., due to the passage of Senate Bill (SB) 433 in the 2008 Georgia General Assembly. SB 433 necessitates revision to the existing administrative rules for administrative appeals of certificate of need decisions. SB 433 abolished the previous Health Planning Review Board and created the Certificate of Need (CON) Appeal Panel. O.C.G.A. 31-6-44 and 31-6-44.1. The revisions are outlined in detail below.

DIFFERENCES BETWEEN EXISTING AND PROPOSED RULES

This rule is amended to reflect new provisions governing the conduct of an initial administrative appeal hearing before the CON Appeal Panel.

274-1-~~09~~ 10 Conduct of Initial Administrative Appeal Hearing.

(1) The initial administrative hearing shall be conducted as a full evidentiary hearing in accordance with O.C.G.A. § 50-13 Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," relating to contested cases, except as otherwise specified in O.C.G.A. § 31-6-44 or these Rules.

(2) Subject to the prior approval of the hearing officer; all files, working papers, studies, notes and other writings or information used by the Department in making its decision shall be public records and available to the parties, and the hearing officer may permit each party to exercise such reasonable rights of pre-hearing discovery of such information used by the parties as will expedite the hearing. Answers to such a request for discovery shall be served by mail within ten (10) business days of the date ~~that~~ the request was mailed. A request for discovery of information not included in items (a) through (f) below shall be made to the hearing officer. Any party may, upon written request to another party, discover the following items as a matter of right:

- (a) a list of considerations and standards that are deemed applicable and as to which evidence will be presented;
- (b) the names and addresses of all witnesses who will be present for the hearing;
- (c) the names and addresses of all witnesses who may be present for the hearing;
- (d) the resume of any expert witness who will or may be present for the hearing;
- (e) a list of each documentary or demonstrative item to be used at the hearing and known at the time the request for discovery is answered; and
- (f) any updates of studies or data previously submitted to the Department.

(3) At least ~~four (4)~~ ten (10) business days prior to commencement of the initial administrative hearing, each party shall mail to the hearing officer and to each attorney of record or party not represented by an attorney a brief summary of the facts and legal

contentions on which the party's case is based. The summary shall not exceed eight (8) double-spaced pages in length.

(4) Each party to an initial administrative hearing shall submit, along with and at the time of the summary of facts and legal contentions referenced in subsection (3) above, the written direct testimony of any expert witness it intends to present at the hearing along with any exhibits which correspond to the direct expert witness testimony. This written material shall be mailed to the hearing officer and to each attorney of record or party not represented by an attorney. The written direct testimony of any expert witness and the corresponding exhibits submitted pursuant to this rule shall be tendered in lieu of direct live testimony of a party's expert witness at the initial administrative hearing. The expert witness of any party shall be subject to live cross examination and redirect examination at the initial administrative hearing. The expert witness shall be tendered as an expert by the party who submitted written direct testimony of the expert witness prior to any cross-examination. An expert witness may also be subject to voir dire with regard to their qualification as an expert by any party at the discretion of the hearing officer. The written direct testimony and corresponding exhibits are not subject to the eight (8) double-spaced page limit referenced in subsection (3) above.

(5) Any party to an initial administrative hearing who intends to submit updates of studies previously submitted to the Department prior to its decision shall submit such updates, along with any supporting documentation, in written form at the same time as the summary of facts and legal contentions referenced in subsection (3) above. The updated studies, if any, shall be mailed to the hearing officer and to each attorney of record or party not represented by an attorney. The updates and supporting documentation are not subject to the eight (8) double-spaced page limit referenced in subsection (3) above.

(6) At least five (5) business days prior to commencement of the initial administrative hearing, each party shall mail to the hearing officer and to each attorney of record or party not represented by an attorney objections to the admissibility of proposed expert testimony, documents, exhibits, and updated studies referenced in subsections (3), (4), and (5) above.

(47) Appellants or Applicants shall proceed first with their cases before the hearing officer in the order determined by the hearing officer; and the Department, if a party, shall proceed last. Any intervenors shall proceed in an order determined by the hearing officer.

(58) The burden of proof shall be on the Appellant.

(69) All evidence shall be presented at the initial administrative appeal hearing conducted by the appointed hearing officer.

(10) In addition to evidence submitted to the Department, a party may present any additional relevant evidence to the appeal panel hearing officer reviewing the decision of the Department if the evidence was not reasonably available to the party presenting the evidence at the time of the Department's review. The burden of proof as to whether the evidence was reasonably available shall be on the party attempting to introduce the new evidence.

~~(711) As provided at O.C.G.A. § 31-6-44(f), a~~ A party or intervenor may present any relevant evidence on all issues raised by the hearing officer or any party to the hearing or revealed during discovery and shall not be limited to evidence or information presented to the Department prior to its decision, except that, ~~unless in response to an issue raised by an opponent or the hearing officer or revealed during discovery, a party or intervenor~~ an applicant may not present a new need study or analysis responsive to the general need consideration or service-specific need formula that is substantially different from any such study or analysis submitted to the Department prior to its decision and that could have reasonably been available for submission. The hearing officer shall consider the latest data available, including updates of studies previously submitted, in deciding whether an application is consistent with the applicable consideration or rules. The hearing officer shall consider the applicable considerations and rules in effect on the date the appeal is filed, even if the provisions of those considerations or rules were changed after the Department's decision. ~~the approved date of the project in the application, supplementary information, or letters of opposition, as timely filed, and that could reasonably have been available for submission to the~~

~~Department prior to the approved date of the project. Except for such limitation on new studies or analyses, the hearing officer may consider the latest data available, including updates of studies previously submitted, in deciding whether an application is consistent with the applicable considerations or Rules.~~

(~~812~~) Initial administrative appeal hearings shall be conducted in such a manner as to conclude in a reasonable period of time. ~~and a~~Any continuance or delays should be as brief as possible and shall only be granted for good cause shown. The hearing officer shall be vested with the authority to set reasonable time limits in advance of or during the hearing for the presentation of each party's case, subject to extension for good cause shown.

(~~913~~) The hearing officer shall make such rulings as may be required for the conduct of the hearing and shall have the authority to do the following in addition to any other rights granted by O.C.G.A. § 50-13, the "Georgia Administrative Procedure Act," which are not otherwise inconsistent with these Rules: administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof; regulate the course of the hearing; set the time and place for continued hearings; fix the time for filing motions and briefs; dispose of motions to dismiss for lack of jurisdiction over the subject matter or parties or for any other grounds; dispose of motions to amend or to intervene; provide for the taking of testimony by deposition or interrogatory; and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the hearing officer. The hearing officer may order such conferences with counsel for the parties, or the parties themselves if they are not represented by counsel, either prior to or during the hearing, as may facilitate determination of questions of evidence and other questions of law and expedite the hearing.

Authority O.C.G.A. § ~~31-5A, 31-6~~, 31-6-44.